

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 22-CR-117-RAW

CODY RAY MCFADDEN

Defendant.

UNOPPOSED MOTION TO CONTINUE JURY TRIAL

COMES NOW the Defendant, Cody McFadden, and pursuant to 18 U.S.C. § 3161(h)(7)(A), respectfully moves the Court to strike the jury trial set for April 2, 2024, and extend all related deadlines by 60 days based upon a June 4, 2024 trial date. In support of such motion, counsel for Defendant states as follows:

1. On August 23, 2022, the Defendant Cody Ray McFadden (“the Defendant”) was charged by way of indictment with Kidnapping in Indian Country, in violation of 18 U.S.C. § 1201(a)(2), 1151 & 1153, Maiming in Indian Country, in violation of 18 U.S.C. § 114, 1151 & 1153, Assault with a Dangerous Weapon with Intent to do Bodily Harm in Indian Country, in violation of 18 U.S.C. § 113(a)(3), 1151 & 1153, and Assault Resulting in Serious Bodily Injury in Indian Country, in violation of 18 U.S.C. § 113(a)(6), 1151 & 1153. (Dkt. #4).
2. Mr. McFadden was arraigned on 8/25/2022. (Dkt. #10). The government sought detention. (Dkt. # 9). Prior to his detention hearing set for 8/29/2022, a motion by prior defense counsel triggered proceedings pursuant to 18 U.S.C. § 4241. (Sealed Motion, Dkt. 21). Following a hearing on the sealed motion, U.S. Magistrate Jason Robertson entered an order of commitment pursuant to §4241(b). (Sealed Order, Dkt. #23). A hearing was held on 12/14/2022; at the conclusion, Judge

Robertson entered an order of commitment pursuant to §4241(d). (Sealed Order, Dkt. 38). Mr. McFadden was transported to BOP facilities in Houston and Chicago for treatment, observation and education. On 1/5/2023, Judge Robertson deemed the government's motion for detention (Dkt. 9) moot in light of the §4241 orders. (Dkt. #39).

3. The Court was presented with a forensic evaluation on 2/22/2024. (Sealed Psychological Evaluation, Dkt. 44). Judge Robertson conducted a competency hearing on 2/28/24 and entered an order finding Mr. McFadden competent to stand trial. (Dkts. # 46 and 52). Having found Mr. McFadden competent, Judge Robertson re-arraigned Mr. McFadden on the Indictment. Based upon the government's oral motion for detention (Dkt. #48) a detention hearing was scheduled on 3/6/2024 (Dkt. #54 and 55). At the conclusion of the hearing, Mr. McFadden was ordered detained pending trial. (Dkt. 57).

4. Defendant asserts that, in this case, the ends of justice outweigh the interests of the public and the Defendant in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Among the factors which the Court shall consider in making a determination on an "ends of justice" continuance is whether failure to grant a continuance in a case which, taken as a whole, is not so unusual or complex, would nonetheless deny counsel for the defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

5. Despite the age of his case, Mr. McFadden has only recently been found competent to fully understand the proceedings against him and appreciate the nature and seriousness of the charges against him. Further, he is now able to assist undersigned counsel in his defense. Counsel needs more time to prepare a defense and/or negotiate alternative dispositions, which means consultation and probable retention of a mental health expert.

6. Defendant advises the Court that the requested continuance implicates the Speedy Trial Act,

18 U.S.C. § 3161 *et seq.* Defendant has been advised by counsel and agrees that any time encompassed by a continuance granted as a result of this request is excludable under the provisions of the Speedy Trial Act. A speedy trial waiver has been signed by Mr. McFadden and it is being filed concurrently with this motion.

WHEREFORE Defendant, by and through his counsel, respectfully requests the Court 1) strike his current trial date of April 2, 2024; 2) place the case on the Court's June 4, 2024, trial docket; and 3) issue a new scheduling order that resets the pre-trial conference date and all deadlines in accordance with a 6/4/2024 trial date.

Respectfully submitted,

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Scott A. Graham, Federal Public Defender

By: /s/ Peter C. Astor

Peter C. Astor, OBA No. #17570

Assistant Federal Public Defender

112 North 7th Street

Muskogee, Oklahoma 74401

(918) 687-2430

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2024, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant(s):

Josh Satter

Assistant United States Attorney

/s/ Peter C. Astor

Peter C. Astor